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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

JORDAN J. POTTER,

Plaintiff,

v.

CRANE CO., et al.,

Defendants.

CASE NO.: 2:20-CV-00276-RFB-VCF

**PLAINTIFF'S MOTION TO EXTEND
THE TIME TO FILE A MOTION FOR
SUBSTITUTION OF PARTY
(First Request)**

JAMES POTTER, as an anticipated administrator and legal representative of the Estate of Jordan Potter, by and through undersigned counsel¹ and pursuant to Fed. R. Civ. P. 6(b)(1)(A) and LR 7-2, respectfully submits this motion so as to extend the time within which Plaintiff(s) must

¹ This motion is also filed by counsel on behalf of the decedent Jordan Potter. As explained more fully below, it is anticipated that James Potters' wife and the decedent's mother, June Potter, may also be appointed as a legal representative of the decedent's estate.

1 file a motion under Fed. R. Civ. P. 25(a)(1) to substitute a party for the now-deceased Plaintiff
2 Jordan Potter. In support, it is hereby stated as follows:

- 3 1. Plaintiff, Jordan Potter, passed away suddenly on February 26, 2022. *See* Plaintiff's
4 Statement of Death, Dkt. 442.
- 5 2. Jordan, who died intestate, was unmarried at the time of his passing and leaves behind a
6 minor child.
- 7 3. Probate proceedings are anticipated to be initiated by the decedent's parents, James and
8 June Potter, and it is anticipated that they will be appointed as Administrators of the Estate.
- 9 4. Counsel for the decedent, Jordan Potter, informed the Court and the remaining Defendants
10 in this case of Jordan's passing both by the filing of the Statement of Death on March 22,
11 2022, and at a hearing and conference held by the Court on April 26, 2022. *See* Minutes of
12 Proceedings, Dkt. 445.
- 13 5. This Motion is being filed in an abundance of caution before the expiration of the 90-day
14 period following the filing of a Notice of Death within which a party can move to substitute
15 the now-deceased Plaintiff with a proper legal representative; and Movant's Counsel will
16 supplement this Motion with copies of the Letter of Administration upon receipt.
- 17 6. Pursuant to the Court's directive to the parties during the April 26, 2022 hearing and
18 conference, Plaintiff's counsel has conferred with counsel for Defendants on this Motion
19 and shows that certain Defendants are opposed to some portions of the relief sought.²
- 20 7. A proposed Order granting the relief requested is attached.

21 **MEMORANDUM OF LAW**

22

23 ² Counsel for Defendants Industrial Manufacturing Company and Arrowhead Products consented to the extension of time within which to substitute the plaintiff in principle, but did not agree to an extension of time until October 10, 2022.

1 FRCP 25(a)(1) provides as follows:

2 **(a) Death.**

3 **(1) *Substitution if the Claim Is Not Extinguished.*** If a party dies and the claim is not
4 extinguished, the court may order substitution of the proper party. A motion for substitution may
5 be made by any party or by the decedent's successor or representative. If the motion is not made
6 within 90 days after service of a statement noting the death, the action by or against the decedent
7 must be dismissed.

8 Plaintiff filed a Statement of Death on March 22, 2022 wherein the Court and the parties
9 were formally notified of the original plaintiff Jordan Potter's death. Jordan Potter's claims were
10 not extinguished by his death. (*See e.g.* NRS § 41.100 which provides that "no cause of action is
11 lost by reason of the death of any person, but may be maintained by or against the person's executor
12 or administrator;" see also NRS § 41.085, which provides that the official representatives and heirs
13 of a decedent have a right to bring a wrongful death cause of action).

14 Thus, pursuant to FRCP 25, the action will be dismissed unless a motion for substitution
15 of plaintiff is filed on or before June 22, 2022 (i.e. 90 days following the filing of the statement of
16 death). When the Statement of Death was filed, no administrator or other legally recognized
17 representative of the decedent Jordan Potter's estate had been appointed, and it was uncertain who
18 would be appointed. The same remains true to date but as per the decedent's adoptive father, James
19 Potter, the decedent's parents are seeking to commence a legal action on the appropriate probate
20 court to have an administrator appointed. Upon that legal representative's appointment, that person
21 is to be substituted in as plaintiff so that Jordan's claims and the interests of his estate, and his
22 heirs (which include a minor child), can be properly and fully represented.
23

1 FRCP 6 is the appropriate vehicle through which to seek an extension of the FRCP 25
2 deadlines. *See e.g. Zanowick v. Baxter Healthcare Corp.*, 850 F.3d 1090, 1094 (9th Cir. 2017)
3 (Rule 25’s “90-day deadline may be extended by Rule 6(b) ... Rule 6(b) ‘works in conjunction
4 with Rule 25(a)(1) to provide the intended flexibility in enlarging the time for substitution.’”
5 [internal citations omitted]. Thus, the motion herein is proper.

6 WHEREFORE, movant respectfully moves this Court for an Order extending the time
7 within which to file a motion to substitute the decedent Jordan Potter as plaintiff until October 10,
8 2022.

9
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1 **UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF NEVADA**

3 JORDAN J. POTTER,

4 Plaintiff,

5 v.

6 CRANE CO., et al.,

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CASE NO.: 2:20-CV-00276-RFB-VCF

**[PROPOSED] STIPULATED ORDER
GRANTING PLAINTIFF'S MOTION
TO EXTEND THE TIME TO FILE A
MOTION FOR SUBSTITUTION OF
PARTY
(First Request)**

8
9 THIS MATTER comes before the Court on Plaintiff's Motion to Extend the Time to File
10 a Motion for Substitution of Party pursuant to Fed. R. Civ. P. 6(b)(1)(A) and LR 7-2.

11 IT IS THEREFORE ORDERED that Plaintiff's Motion to Extend the Time to File a
12 Motion for Substitution of Party is **GRANTED**.

13
14 IT IS SO ORDERED:

15 
16 **RICHARD E. BOULWARE, II**
17 **United States District Court**

18 DATED this 26th day of May, 2022.
19
20
21
22
23

CERTIFICATE OF SERVICE

I certify that I am an employee of MAUNE RAICHLE HARTLEY FRENCH & MUDD LLC and that on the 25th day of May, 2022, I served a true and correct copy of the foregoing **CERTIFICATE OF INTERESTED PARTIES** to all parties on file with the CM/ECF:

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